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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,800	12/19/2001	Paul F. Nugent JR.	10183	6090

26884 7590 03/04/2004

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EXAMINER

GIBSON, RANDY W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,800

Applicant(s)

NUGENT, PAUL F.

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 8-11, and 15-19 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Sternberg (Patent Application Publication # US 2002/011275 A1). Sternberg disclose the claimed invention including an electronics box (50) and two elongated support members (20) with strain gages (p. 3, paragraph 0038) where the sole structural connection between the two support members is a surface plate (12). The fact that the support plate (12) is connected to the support members (20) via extension members (14) is not deemed significant since the claims as worded do not exclude such an embodiment.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 3, 4, 6, 7, 12-14 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sternberg. Sternberg discloses the claimed invention, as discussed *supra*, except for the limitations of the exact location of the electronics box, the limitation of making the plate more rigid as the separation of the two members is increased, the exact type of cable used, the exact dimensions of the support members, and the plate being transparent to a barcode scanner.

It does not appear that the precise location of the electronics box is critical to the operation of the device; the courts have held that merely shifting the position of a part in a way which does not change the operation of the device is a design choice which would have been obvious to the ordinary practioner. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975): and, *MPEP* § 2144.04 (VI)(C).

It is inherent that the bed frame would have to be made more rigid to prevent it from collapsing if it were made larger. The examiner takes official notice that beds come in different sizes such as single, twin, full, queen, king, etc. The examiner notes that the courts have held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device, and a device having the claimed relative dimensions would not perform differently than the prior art device, then the claimed device was not patentably distinct from the prior art device; *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984); see also *MPEP* §§ 2144.02, 2144.03, & 2144.04 (IV)(A).

The R5232 lead is an off the shelf component which the applicant admits that he did not invent; it would have been obvious to the ordinary practioner to use a known part for its intended purpose. See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960); and, *MPEP* §§ 2129 & 2144.07.

As for the exact length of the support members, the Federal Circuit has held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, then the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

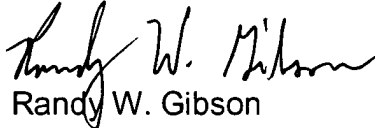
As for the plate being transparent to radiation from a bar code scanner, the examiner notes that the supporting frame of a bed is usually not a continuous solid surface but rather comes as a wire grid for supporting a mattress; such a grid would inherently allow light to pass through its many apertures.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 271-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David S Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Randy W. Gibson
Primary Examiner
Art Unit 2841